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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151124999-8985-01]

RIN 0648-BF57

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approval of New Gear Under Small-Mesh Fisheries Accountability Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: We propose to approve new selective trawl gear for use in several non-groundfish fisheries when subject to the Georges Bank yellowtail flounder accountability measure. The proposed selective gear would reduce bycatch of groundfish species, while allowing the target fisheries to continue operating when selective trawl gear is required. Approving this selective trawl gear would provide the fishing industry with more flexibility because there are limited selective trawl gears currently approved for use. We also propose to disapprove the use of this gear in the southern windowpane accountability measure areas.

DATES: Written comments must be received on or before *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2018-0119, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal.
 1. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2018-0119*;
 2. Click the “Comment Now!” icon and complete the required fields; and
 3. Enter or attach your comments.
- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the Proposed Rule for Selective Gear.”

Instructions: All comments received that were timely and properly submitted are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us.

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Management Specialist, phone: (978) 281-9116; e-mail: *Emily.Keiley@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Multispecies Fishery Management Plan (FMP) requires the use of selective trawl gear in certain times and areas. The FMP specifies the list of selective trawl gear that meet the required selectivity standards. The FMP also authorizes NMFS to approve additional selective gear, at the request of the New England Fishery Management Council, if the

gear meets the regulatory requirements for new selective gear. The regulations (§ 648.85 (b)(6)(iv)(J)(2)(i)) require that new selective gear must either: Demonstrate a statistically significant reduction in catch of at least 50 percent, by weight, on a trip-by-trip basis, of each regulated species stock of concern, or, catch of stocks of concern must be less than 5 percent of the total catch of regulated groundfish (by weight, on a trip-by-trip basis). The Council submitted two requests to add the large-mesh belly panel to the list of approved selective gears: (1) For the Georges Bank yellowtail accountability measure (AM); and (2) for the southern windowpane AM.

The small-mesh trawl fishery (*e.g.*, whiting and squid) has a sub-annual catch limit (sub-ACL) and AM for Georges Bank yellowtail flounder. If catch exceeds the sub-ACL, the AM requires small-mesh trawl vessels to use selective trawl gear that reduces flatfish catch in certain areas for the subsequent fishing year.

Southern windowpane flounder is allocated to three fishery components: Groundfish; scallops; and, other non-groundfish fisheries. The other (non-groundfish) component is primarily the scup, fluke, squid, and whiting fisheries. If the AM for the other (non-groundfish) component is triggered, vessels fishing with any trawl gear with a codend mesh size greater than, or equal to 5 in (12.7 cm), are required to use one of the approved selective trawl gears to reduce flatfish bycatch in certain areas in Southern New England in a subsequent year.

The selective trawl gears approved for use under these AMs are: Haddock separator trawl; Ruhle trawl; and rope separator trawl. When we adopted the AMs for the non-groundfish fisheries, many industry members expressed concern that the selective trawl gears currently approved for use were not suitable for their fisheries. To address this concern, Cornell University conducted a series of studies to test the effectiveness of a new selective gear, the

large-mesh belly panel, in several non-groundfish fisheries. The experimental gear included a large-mesh panel to replace the first bottom belly of the trawl net that allows flatfish such as windowpane and yellowtail flounder to escape.

Cornell University conducted two studies in 2014 to investigate using a large-mesh belly panel in a small-mesh trawl net typical of those used in the squid and whiting fisheries on Georges Bank. Both experiments demonstrated a statistically significant reduction in catch of more than 50 percent of Georges Bank yellowtail flounder on a trip-by-trip basis, as required by regulations, without a significant reduction in squid and whiting catch. These studies also demonstrated that the large-mesh belly panel reduced catch, by more than 50 percent per trip, of stocks that are overfished or subject to overfishing.

Cornell University conducted an additional study in 2015 to investigate using a large-mesh belly panel in a trawl net typical of those used in the scup fishery in southern New England waters. The experiment demonstrated a statistically significant reduction in southern windowpane flounder catch of more than 50 percent, without a significant reduction in catch of legal-sized scup. Catch in the large-mesh belly panel gear was compared to catch in the standard net, and three regulated stocks of concern were caught in significant numbers in the standard net. The percent reduction by trip, and the mean percent reduction, for each species is presented in Table 1; trips that do not meet the 50 percent reduction standard are highlighted in gray. Catches, on average, of yellowtail and winter flounder were only reduced by 48 percent when the large-mesh belly panel was used.

Table 1: Percent decrease in catch, of species of concern, in the large-mesh belly panel compared to standard trawl gear in southern New England waters.

Trip ID	Stocks of Concern, Percent Decrease		
	Windowpane Flounder	Yellowtail Flounder	Winter Flounder
1	38%	60%	49%
2	53%	35%	45%
3	56%	55%	33%
4	58%	43%	65%
Mean	51%	48%	48%

Proposed Action

Based on the results of the studies described above (copies available from NMFS at the mailing address listed under **ADDRESSES**), we have preliminarily determined that the large-mesh belly panel meets the necessary gear performance standards for use in the Georges Bank yellowtail AM area, and we are proposing to approve the use of this gear in that area. The large-mesh belly panel would be added to the list of three existing selective gears currently authorized for use in the Georges Bank yellowtail AM area. We have also preliminarily determined that the large-mesh belly panel does not meet the gear standard in the southern windowpane AM area, and we are proposing to disapprove its use in that area.

This action would define the large-mesh belly panel in the regulations in § 648.80. The proposed gear specifications included in this rule are based on the experimental gear used in the Cornell studies. The experimental selective gear was a 4-seam 3-bridal otter trawl, modified to include a large-mesh panel to replace the first bottom belly that allows escapement of flatfish. The large-mesh panel was made from 5 mm (3/16 in) poly webbing and the mesh size was approximately 32 in (81.3 cm) knot-center to knot-center diamond mesh. The panel was two meshes deep and was sewn into the standard mesh of the first bottom belly using a “saw-toothing” technique. This resulted in an effective area for fish escapement of three full 32-in

(81.3-cm) meshes, or an opening in the belly of the net that is approximately 8 ft (2.4 m) deep from front to back. The large-mesh belly panel was attached approximately 1 ft (30.5 cm) behind the footrope and extended widthwise across the entire belly of the net (from gore to gore). Because it is important that the large-mesh belly panel gear definition balance the conservation requirements and adaptability of the gear modifications across multiple fisheries, we are requesting specific comments on this gear configuration.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the National Marine Fisheries Service (NMFS) Assistant Administrator has made a preliminary determination that this proposed rule is consistent with Framework 51, other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, we will consider the data, views, and comments received during the public comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual determination for this determination is as follows.

The Council requested that we approve a new selective trawl gear (the large-mesh belly panel) for use in several non-groundfish fisheries to reduce groundfish bycatch. For some stocks, non-groundfish fisheries have an AM that requires the use of selective trawl gear when

the ACL has been exceeded. Most of the approved selective trawls are not designed for use in these fisheries, and the large-mesh belly panel would provide these fisheries a better alternative than what is currently available. The requirement to use selective trawl gear was adopted in 2013. This rule would provide vessels an alternative selective gear for meeting that requirement, which would provide additional fishing opportunities, increase operational flexibility, and improve economic efficiency. This action is necessary to allow the fisheries to more effectively harvest its optimum yield, while continuing to reduce bycatch of windowpane and yellowtail flounder. This action seeks to fulfill the purpose and need while meeting the overarching goals and objectives of the Northeast Multispecies FMP.

For purposes of the Regulatory Flexibility Act, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (*see* 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The determination of whether the entity is large or small is based on the average annual revenue for the most recent 3 years for which data are available (in this case, from 2014 through 2016).

The small-mesh exempted fishery allows vessels to harvest species in designated areas using mesh sizes smaller than the minimum mesh size required by Regulated Mesh Area regulations. To participate in the small-mesh multispecies exempted fishery, vessels must possess either a limited access multispecies permit (categories A, C, D, E, or F) or an open access multispecies permit (category K). Limited access multispecies permit holders can target small-mesh multispecies with different possession limit requirements depending on fishing

region and mesh size used. Open access, Category K permit holders may fish for small-mesh multispecies when participating in an exempted fishing program. Therefore, entities holding one or more multispecies permits (permit type A, C–F, K) are the entities that have the potential to be directly impacted by this action. According to the commercial database, there were 853 distinct ownership entities, based on entities' participation during the 2014–2016 time-period, that could potentially target small-mesh multispecies. This includes entities that could not be classified into a business type because they did not earn revenue from landing and selling fish in 2014–2016 and thus are considered to be small. Of the 853 total firms, 844 are categorized as small business entities and 9 are categorized as large businesses. While 853 commercial entities have the potential to be impacted by the proposed action, not all of these entities actively land small-mesh multispecies for commercial sale. There are 406 distinct entities that commercially sold small-mesh multispecies from 2014–2016 and may be directly affected by the proposed action. Of those, 404 are categorized as small businesses.

The measures proposed are expected to have a positive economic effect on small entities. It could increase catch of target stocks, in a scenario when fishing would otherwise be prohibited. Providing increased fishing opportunities should increase landings and profits. This action is not expected to have a significant or substantial effect on small entities. The effects on the regulated small entities identified in this analysis are expected to be positive relative to the no action alternative, in which this new selective trawl gear would not be added to the list of approved selective gears. Under the proposed action, small entities would not be placed at a competitive disadvantage relative to large entities, and the regulations would not reduce the profit for any small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement will be submitted to OMB for approval. Public reporting burden for the selection of the gear code is estimated to average one minute per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 09, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.84, add paragraph (f) to read as follows:

§ 648.84 Gear-marking requirements and gear restrictions.

* * * * *

(f) *Large-mesh belly panel trawl.* A large-mesh belly panel trawl is defined as a four-seam bottom trawl net (*i.e.*, a net with a top and bottom panel and two side panels) modified to include a large-mesh panel to replace the first bottom belly, as further specified in paragraphs (f)(1) and (2) of this section.

(1) *Mesh size.* The minimum mesh size applied throughout the body of the trawl, as well as the codend mesh size, must be consistent with mesh size requirements specified in § 648.80. If a vessel is fishing in an exemption area or an exempted fishery, it must comply with all of the requirements and conditions of the exemption.

(2) *Large-mesh belly panel.* The large-mesh belly panel must have a minimum mesh size of 30 in (76.2 cm) measured using the standard defined in § 648.80(f)(2). The width of the panel must extend the full width of the bottom panel (*i.e.*, from one bottom gore to the other bottom gore). The depth must be at least 90 in (228.6 cm) and at least 3 meshes deep (2 meshes deep with a 15-in (38.1-cm) sewing seam on top and bottom). No more than six meshes of the small-mesh net may be left behind the sweep, before the large-mesh panel is sewn in.

3. In § 648.90, revise paragraph (a)(5)(v), to read as follows:

§ 648.90 NE multispecies assessment, framework procedures, and specifications, and flexible area action system.

(a) * * *

(5) * * *

(v) *AM if the small-mesh fisheries GB yellowtail flounder sub-ACL is exceeded.* If NMFS determines that the sub-ACL of GB yellowtail flounder allocated to the small-mesh fisheries, pursuant to paragraph (a)(4)(iii)(G) of this section, is exceeded, NMFS shall implement the AM specified in this paragraph consistent with the Administrative Procedures Act. The AM requires that small-mesh fisheries vessels, as defined in paragraph (a)(4)(iii)(G)(I) of this section, use one of the following approved selective trawl gear in the GB yellowtail flounder stock area, as defined at § 648.85(b)(6)(v)(H): A haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator

trawl, as specified in § 648.84(e); a large-mesh belly panel trawl, as specified in § 648.84(f); or any other gear approved consistent with the process defined in § 648.85(b)(6). If reliable information is available, the AM shall be implemented in the fishing year immediately following the year in which the overage occurred only if there is sufficient time to do so in a manner consistent with the Administrative Procedures Act. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined after the start of Year 2 that the small-mesh fisheries sub-ACL for GB yellowtail flounder was exceeded in Year 1, the applicable AM would be implemented at the start of Year 3. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an overage of the small-mesh fisheries sub-ACL did not occur, NMFS shall rescind the AM, consistent with the Administrative Procedure Act.

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